

**THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

**GWENDOLYN P. MCQUIRTER &
CHARLES E. MCQUIRTER,**

Plaintiffs,

V.

CASE NO. 2:07-cv-00234-MEF-WC

**CITY OF MONTGOMERY and
FICTITIOUS DEFENDANTS A – Z,
whether singular or plural, those
individual employees, or former
employees of the City of Montgomery,**

Defendants.

**RESPONSE OF DEFENDANT, CITY OF MONTGOMERY
TO PLAINTIFFS' MOTION FOR DEFAULT JUDGMENT**

COMES NOW Defendant, City of Montgomery and submits the following in Response to Plaintiffs' Motion for Default Judgment:

1. Plaintiffs filed a Complaint with state law claims against multiple media Defendants and Fictitious Parties A-Z on February 8, 2007. The Amended Complaint filed in the Circuit Court of Montgomery County, Alabama on March 2, 2007 only named as Defendants, City of Montgomery and fictitious parties A-Z, as employees and former employees of the City of Montgomery. Before Defendant City of Montgomery answered Complaint, Plaintiff filed an Amended Complaint which is stamped filed on March 5, 2007, a copy of which was provided to Defendant City of Montgomery on that date.

2. Based on the new claims in the Amended Complaint, Defendant petitioned this Court

for removal on March 15, 2007. Additionally, the Amended Complaint named only as Defendants, City of Montgomery and fictitious parties A-Z, as employees and former employees of the City of Montgomery.

3. On March 27, 2007, Plaintiffs filed a Motion for Default Judgment for failure to plead, answer or otherwise defend this action by March 26, 2007, the time provided by Rule 81(c) of the Federal Rules of Procedure for a responsive pleading to a removed action. (*Document 2*).

4. On March 27, 2007, Defendant filed an Answer with Affirmative Defenses to Plaintiffs' Amended Complaint. (*Document 3*).

5. Rule 55 (a) of the Federal Rules of Civil Procedure provides that "When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party's default." There was no affidavit filed with Plaintiffs' Motion for Default Judgment.

6. Plaintiffs have not complied with Rule 55(a) of the Federal Rules of Civil Procedure. Without waiving affirmative defenses, Defendant submits that if the Answer was untimely by one day, it was not willful and Defendant presents meritorious defenses in the Answer with Affirmative Defenses filed on March 27, 2007.

WHEREFORE, ABOVE PREMISES CONSIDERED, Defendant respectfully moves this Honorable Court to deny Plaintiffs' Motion for Default Judgment.

Respectfully submitted this the 28th day of March, 2007.

/s/ Kimberly O. Fehl
Kimberly O Fehl (FEH001)

OF COUNSEL:
Legal Department

City of Montgomery
Post Office Box 1111
Montgomery, Alabama 36101-1111
(334) 241-2050
(334) 241-2310 (fax)

CERTIFICATE OF SERVICE

I hereby certify that foregoing has been served upon the following by electronic filing or by

U. S. Mail, postage prepaid on this 28th day of March, 2007:

Jerry M. Blevins, Esq.
Law Office of Jerry M. Blevins
Hillwood Office Center
2800 Zelda Road, Suite 200-3
Montgomery, Alabama 36106

/s/ Kimberly O. Fehl
Of Counsel